STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard	**Case 15-E-0302**
In the Matter of Offshore Wind Energy	**Case 18-E-0071**

COMMENTS OF THE CITY OF NEW YORK ON THE REQUESTS FOR CLEAN ENERGY STANDARD CONTRACT MODIFICATIONS

Dated August 28, 2023

NYC MAYOR'S OFFICE OF
CLIMATE AND ENVIRONMENTAL JUSTICE
253 Broadway, 14th Floor
New York, New York 10007

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PRELIMINARY STATEMENT

Since the Public Service Commission ("Commission") adopted a Clean Energy Standard in 2016, the New York State Energy Research and Development Authority ("NYSERDA") has conducted six solicitations for onshore wind, solar, and storage resources, two solicitations for offshore wind resources, and one solicitation for renewable resources directly connected to New York City. NYSERDA has entered into 115 contracts for 13,730 MW of renewable generation and storage capacity, 2,550 MW of transmission capacity, and two projects that will deliver 18.3 million MWh of clean energy to New York City.[1] Of those totals, only 14 projects have commenced commercial operation, providing 681 MW of new renewable capacity to the New York supply portfolio.[2]

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1 *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers. The City notes that the Alliance for Clean Energy New York provided slightly different numbers in its petition.

2 Case 22-M-0149, Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act, New York State Department of Public Service First Annual Information Report on Overall Implementation of the Climate Leadership and Community Protection Act (filed July 20, 2023) ("CLCPA Annual Report") at 13.

Now, most of the holders of the awarded NYSERDA contracts that are not yet in commercial operation have petitioned the Commission seeking upward adjustments to their strike prices due to inflation, the COVID pandemic, supply chain issues, and other reasons.[3] They contend that some, or perhaps many, of the projects are at risk if relief is not granted.

The City recognizes that economic conditions have changed since the COVID pandemic and costs have increased. Indeed, the City is sympathetic to the concerns the developers have raised as the City's own operations and costs have been similarly affected by these factors. However, the City has concerns with the magnitude of the requests presented and their impact on energy affordability.

At the same time, the City is very concerned about the implications of failing to provide any relief whatsoever. It is critically important on many levels that the State achieves the goals of the Climate Leadership and Community Protection Act ("CLCPA") – particularly the 70% renewable energy by 2030 goal. That goal will broadly help reduce the State's contribution to global warming, and it also will contribute to local air quality improvements in New York City, contribute to electric system reliability and resiliency, provide opportunities for many good-paying jobs in the clean economy, and serve as an economic development boost to New York City and other communities in the Hudson River Valley. Further, achievement of the CLCPA 70 x 30 goal

[3] Case 15-E-0302, Implementation of the Large-Scale Renewable Program and a Clean Energy Standard, Petition of the Alliance for Clean Energy New York to Address Post COVID-19 Impacts on Renewable Development Economics and Contract Considerations (filed June 7, 2023) ("ACE-NY Petition"); Verified Petition of Sunrise Wind LLC for an Order Authorizing the New York State Energy Research and Development Authority to Amend the Offshore Wind Renewable Energy Certificate Purchase and Same Agreement (filed June 7, 2023) ("Sunrise Wind Petition"); Verified Petition for Expedited Approval of Enhanced Offshore Renewable Energy Credits (filed June 7, 2023) ("Empire Wind Petition"); and Petition of Clean Path New York LLC to Address Post-COVID Impacts and Associated Considerations Concerning the Tier 1 Eligible Generation Component of its Clean Energy Standard Tier 4 Renewable Energy Certificate Contract (filed June 14, 2023) ("CPNY Petition").

is essential to New York City Local Law 97, and the Commission should bear in mind that failure to achieve the CLCPA's goals – particularly the 70 x 30 goal – could lead directly to an increase in costs and fines for New York City buildings covered by Local Law 97.

As noted above, only a relatively small number of projects have commenced commercial operations to date, meaning there is much work to do and time is of the essence to achieve the State's 2030 goal. The Commission must engage in the difficult task of balancing the interests at issue here – the developers' need for additional financial support, customers' energy affordability concerns, and achievement of the CLCPA's goals, and it should do so expeditiously. The City believes that it is possible to conduct this balancing and decide the petitions in a manner that is fair and equitable.

The City respectfully recommends that the Commission provide appropriate, targeted relief to the developers and impose conditions on the provision of relief to foster achievement of the 70 x 30 goal. Limiting the relief provided will temper the impacts on customers and address the energy affordability concerns while providing the fiscal boost that most of the projects need to restore their economic viability, and reducing the potential for unearned windfall profits in the future.

The relief provided should be need-based, and each developer should be required to demonstrate the level of financial support it actually needs to restore its viability. The generic approach advocated by ACE-NY is not appropriate as it has the potential to overcompensate some generators and does not take into account the different stages of development of each project. To be clear, there should be a cap on the amount of relief provided for any project, but the determinations should be made on an individual basis just as each project was selected based on its specific merits and costs. Although time is of the essence, the City believes that these

determinations can be made relatively quickly.[4] The City acknowledges that this approach may not provide sufficient support for every contracted project, but the City does not believe that customers should be required to fund otherwise uneconomic projects.

COMMENTS

POINT I

IT IS IMPORTANT FOR THE COMMISSION TO FAVORABLY CONSIDER THE PETITIONS

The CLCPA has been described as aggressive, visionary, and ambitious. The City agrees. Combatting global warming and climate change require actions to be taken around the world, and New York can and should do its part. The CLCPA represents a major step forward, provided its goals can be attained.

The COVID pandemic deeply impacted many people and many businesses. Collectively, the ACE-NY Petition, Empire Wind Petition, Sunrise Wind Petition, and CPNY Petition point to inflation, higher interest rates, and supply chain issues as the bases for the need for additional funding from customers. All of these factors can be linked to the COVID pandemic, and the City submits that the experiences of the renewable resource developers are not unique. The City, itself, operates massive water and sewer systems, transportation systems, and thousands of buildings and facilities that have experienced similar impacts because of the pandemic. Its operating costs have increased, and it is aware that the operating costs for private companies have increased. Accordingly, the concerns and cost pressures raised in the four Petitions are neither surprising nor unexpected.

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[4] Each developer holding a NYSERDA contract should have readily available its financial details and cost drivers, as well as estimates of the amounts needed to cover its incremental costs. It appears that the Empire Wind and Sunrise Wind Petitions include this information, demonstrating that it should not be burdensome for any developer to provide it.

In order to achieve the CLCPA's 70 x 30 goal, thousands of megawatts of carbon-free generating capacity will need to be constructed in New York. As noted above, only a very modest amount of renewable capacity has actually commenced commercial operation. Therefore, there is much work remaining to be accomplished, and a concerted effort is needed to ensure that the goal is reached. The City submits that the path forward should include the projects that already have contracts in place and are in development.

As a result, the City recommends that the Commission should provide targeted relief to projects that are proceeding diligently through the procurement, siting, and construction phases of development but which are at risk because of changing economic circumstances. For projects that have not proceeded at all, the Commission should assess whether it would be feasible within CLCPA timelines to direct NYSERDA to exercise its rights under the contracts, including termination if appropriate, and then conduct a new solicitation for replacement and/or incremental resources. The City believes that, at least in some instances, there is sufficient time to solicit, select, site, and construct projects by 2030, but doing so will be challenging and no time can be wasted. This multi-faceted approach should ensure that meritorious projects are able to continue to move forward and new projects can be quickly selected to replace those that are no moving forward.

Achieving the CLCPA's goals is especially important to the City. Its public policies mirror those of the State, and the City has the same interest in reducing and eventually eliminating greenhouse gas emissions from the production of electricity. In particular, in April 2019, the City Council passed Local Law 97, a groundbreaking law requiring buildings over 25,000 square feet to meet energy efficiency and greenhouse gas emissions limits that increase over time. The law

imposes penalties on buildings that exceed the specified limits. The success of Local Law 97 is connected to the success of CLCPA.

The greenhouse gas limits imposed on buildings by Local Law 97 take into account the application of coefficients, or emissions intensity factors, that were developed based, in part, off of achievement of significant greenhouse gas emissions reductions statewide. One pathway to compliance with Local Law 97 is to make improvements to buildings to reduce their emissions. A second pathway to compliance is to purchase renewable energy certificates ("RECs"). If the CLCPA goal is not achieved, the Local Law 97 coefficients would in the future need to be recalculated, which would increase the amount of retrofit work buildings are required to undertake and the fines buildings would face. A delay in achieving the CLCPA goals would reduce the compliance value of RECs. As the Commission is aware, there is limited availability of RECs, and demand has outstripped supply. More renewable resource projects need to commence operations to produce more RECs.

In addition to the success of Local Law 97, the City wants to see the CLCPA goals be attained because they will contribute to reliability and resiliency of the electric system and localized air quality and public health improvements, as well as provide important economic development opportunities. First, within New York City, electric system reliability is partially dependent on a fleet of very old and inefficient fossil-fueled electric generating facilities. Achieving the CLCPA goals will involve a combination of new generating facilities directly interconnecting within New York City and controllable transmission lines that will deliver reliable, carbon-free electricity directly to New York City (such lines are considered by the New York Independent System Operator, Inc. ("NYISO") to be the equivalent of new supply resources

directly connected to New York City). These new resources should help to improve system reliability.

As a corollary point, the NYISO recently announced a short-term reliability need in New York City and indicated that it may require some peaking units to remain on-line after May 1, 2025. While it is unlikely that new renewable resources will be able to address that short-term term, the situation demonstrates the need for new, and more, resources serving New York City as a way to ensure that local air pollution and environmental justice imperatives can be met. Extensive delays in the provision of large-scale renewables to New York City increase the potential for peaking units to remain open years into the future, counter to State and City objectives. Because achievement of the CLCPA goals should contribute to system reliability, it should help reduce the need to further rely on the peaking units.

Second, the transformation of the electric system involves a diversification of supply, including offshore wind, onshore wind, solar, hydropower, storage, and more. The transformation also involves resources located in many different areas. This diversification should improve system resiliency. Third, the linkage between emissions from fossil fuel-burning power plants and respiratory ailments among people who live close to the plants has been well-established. Achieving the CLCPA goals should lead to some in-City generating facilities being shut down and others operating far less. Their concomitantly lower air emissions will improve air quality in the neighborhoods surrounding the facilities and lead to lower levels of childhood asthma, other respiratory ailments, and emergency room visits.

Last, achievement of the CLCPA goals is important because of its attendant economic development benefits for New York City and the State. The development, construction, operation, and maintenance of renewable resources will require a large workforce. A number of developers

have committed to train and provide employment opportunities to members of disadvantaged communities. Several offshore wind developers also have committed to developing offices, construction bases, and maintenance facilities in New York City, revitalizing areas along the waterfront and providing direct and indirect economic benefits. The developers plan to hire many workers for these good-paying jobs, and they plan to procure goods and services from local companies, thereby supporting more good-paying jobs and generally contributing to the overall health of the City's and State's economies. If the projects are canceled because of the economic problems discussed in the Petitions, a valuable opportunity will have been squandered.

The Commission has the ability to ensure that the above-described benefits are achieved on a timely basis, the harms associated with the extended operation of the in-City generation fleet are not exacerbated, New York City building owners are not exposed to higher monetary penalties, and New Yorkers will have access to many good-paying jobs. Accordingly, the City respectfully urges the Commission to exercise its discretion in these matters and grant the petitions, subject to the conditions and modifications discussed herein.

POINT II

THE COMMISSION NEEDS TO CONSIDER ENERGY AFFORDABILITY AS IT CONSIDERS THE PETITIONS FOR RELIEF

While the City agrees that relief should be provided to the developers of onshore and offshore renewable resources for the reasons set forth above, the City recognizes that providing relief will have an impact on customers. Accordingly, a balanced approach that considers the needs and interests of developers and customers is needed. Inasmuch as the Commission routinely balances the interests of shareholders and customers in rate cases and other proceedings, the City is confident that the Commission will be able to craft a reasonable and fair balance in these matters.

Indeed, the Commission has taken several actions to reduce utility cost impacts on customers. Foremost among these efforts was action in 2016 to establish a target energy cost burden for all low-income households in New York at 6% of household income.[5] In rate cases, the Commission and Department of Public Service Staff have scrutinized the utilities' rate requests, often substantially reducing the size of rate increases. For example, in the recent Con Edison electric and gas rate cases, the new rates established by the Commission were more than 50% lower than the rates initially requested by Con Edison.[6]

The City recognizes that crafting a balanced approach that ensures the best chances of success in achieving the CLCPA goals while minimizing the impacts on customers is a difficult task. To aid the Commission in doing so, the City recommends that the Commission authorize NYSERDA to modify its contracts with renewable developers to provide relief up to a cap, as discussed in more detail below. This approach should be sufficient to allow many, but perhaps not all, of the projects to move forward while protecting customers from providing support for projects that arguably are uneconomic and should not be pursued as proposed.

Additionally, this approach would treat the interests of customers as being equal to the interests of the renewable developers and their investors. Moreover, because the Petitions involve changes to existing contracts, and the developers seek to preserve returns on their investments via the relief requested – with no sharing in the event their actual returns exceed their projections – it

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[5] Case 14-M-0565, Examination of Programs to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016). The Commission affirmed and strengthened this policy in 2021 – Cases 14-M-0565, *et al. supra*, Order Adopting Energy Affordability Policy Modifications and Directing Utility Filings (issued August 12, 2021).

[6] *See* Cases 22-E-0064 and 22-G-0065, Consolidated Edison Company of New York, Inc. – Electric and Gas Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements (issued July 20, 2023).

is appropriate for the Commission to place more risk on the developers than on customers. It is equally appropriate for the Commission to impose requirements on the developers as conditions for granting them relief, as discussed below.

A final point that applies to all of the Petitions is that while the City supports the provision of relief to developers due to the extraordinary circumstances surrounding the COVID pandemic and the need to foster and facilitate achievement of the CLCPA's goals, the relief should be limited to covering the developers' incremental costs. It would be unjust and unreasonable to modify any of the contracts for the purpose of increasing either developer's profits. Indeed, such a purpose would disrupt the balance discussed above between developer and customer interests. The developers' return expectations should have been fully captured by their original strike prices. While the relief provided should generally allow for those expectations to be met, the circumstances do not warrant providing higher returns to any developer.

With these modifications to the requests for relief, the City believes that the Commission will reasonably address the concerns regarding energy affordability in the context of advancing the State towards the CLCPA goals.

POINT III

THE COMMISSION SHOULD LIMIT THE RELIEF GRANTED TO TIER 1 PROJECT DEVELOPERS AND IMPOSE REQUIREMENTS AS CONDITIONS FOR RECEIVING RELIEF

While the City believes the holders of Clean Energy Standard Tier 1 contracts with NYSERDA should receive some relief for the reasons set forth in the ACE-NY Petition and as discussed above, the City has some concerns with the level of relief requested and the support and approach set forth in the ACE-NY Petition. First, that Petition does not contain any information on the actual impacts of the COVID pandemic, inflation, or supply chain disruptions on any New

York renewable resource developer. Instead, it relies on a generalized analysis with no evidence that the generalized impacts are equal to the impacts experienced by each developer of one or more Tier 1 projects. Second, the Petition seeks general increases to strike prices based on the year in which projects were selected by NYSERDA as opposed to increases tied to actual project-related costs. Again, no evidence is offered that every project needs the same level of relief, and such an approach is inconsistent with the manner in which the projects were first selected.

Third, neither ACE-NY nor any of the Tier 1 developers have offered any consideration for the increased funding they are seeking.[7] For example, there is no indication of increased certainty that projects will be timely pursued or that the increased funding will lead to completion and commercial operation of the projects. Fourth, the request is inequitable in that if actual costs are less than the generalized – but very high – projections in the ACE-NY Petition, there is no proposal to return the difference to customers. Neither the extraordinary circumstances surrounding the COVID pandemic nor the compelling interest in achieving the CLCPA's 70 x 30 goal justify reopening the Tier 1 contracts to enrich the developers and their investors.

Fifth, the request for relief does not distinguish in any way between and among developers who have made good faith attempts to complete their projects and developers who have done little to nothing for years. Indeed, ACE-NY's request would reward developers who have done nothing. Sixth, there should be an overall cap on additional per project funding.

As discussed above, the City believes that relief should be provided to meritorious projects that have diligently pursued development and completion. But, the City disagrees that the blanket

[7] It is a basic principle of contract law that there must consideration for a contract to be legally binding. That is, there must be some value or benefit for each party to the contract. In this matter, the consideration for the initial contracts was the development of the renewable resources. Since the developers are seeking enhancements to the contracts, there should be some incremental benefits for the State and customers.

approach sought by ACE-NY is reasonable, fair, or appropriate. The City recommends that the Commission limit the amount of relief provided and impose conditions of the provision of relief.

A. The Petition Lacks Proper Justification

The ACE-NY Petition seeks substantial amounts of additional funding from customers in New York.[8] For some projects, the request constitutes more than a 70% increase from the strike prices set forth in the contracts between the developers and NYSERDA.[9] The City is disappointed that no Tier 1 developer was willing to provide any concrete evidence that its costs have actually increased by the amounts set forth in the ACE-NY Petition. Moreover, the City is disappointed that ACE-NY offered only a generalized macro analysis of nationwide industry trends and made no attempt to provide data that is specific either to New York or to the Northeast region, or otherwise to demonstrate any linkage or nexus between the generalized industry trends and developers' actual experience in New York.

The City believes the ACE-NY Petition is sufficient for the Commission to find that there is a rational basis to provide relief to the Tier 1 projects, but the Petition is not sufficient to support providing the level of relief requested therein. Moreover, the Petition is not sufficient to support a finding that every developer of the same resource type should receive the same level of relief. Rather, as discussed in the next sections, the Commission should establish an expedited process to determine the level of relief that is appropriate – within an overall cap – for each Tier 1 project on a case-by-case basis in the same manner that the Tier 1 projects were selected.

8 ACE-NY Petition, Attachment A at ¶ 80.

9 *Id.* at ¶ 81, Table 17.

B. Relief Should Be Granted On A Case-By-Case Basis

When NYSERDA conducted its Tier 1 solicitations, it required bidders to participate in a two-step process.[10] The first step required prospective bidders to identify specific resources (including location, size, resource type, and facility characteristics) and demonstrate that they were eligible for Tier 1. The second step required eligible bidders to provide binding bids that included strike prices, bid quantities, satisfaction of minimum thresholds (*e.g.*, interconnection status, site control), and information on the specific benefits to be provided by the project.[11] Under NYSERDA's solicitation rules, generalized information about a non-specific facility would not have been accepted or considered.

Subsequently, NYSERDA conducted a detailed evaluation of each bid, and it selected only certain bids to receive Tier 1 contracts. Each contract was specific to an individual project, and each contract specified the strike price for that project. NYSERDA has conducted six Tier 1 solicitations (the 2022 solicitation remains pending), and it did not establish a general strike price applicable to every selected project in any of those solicitations.

ACE-NY asserts that its approach would be administratively easy to administer.[12] While that may be true, it is not a sufficient or reasonable justification given the amount of money at issue, the need for heightened certainty regarding achievement of the CLCPA goals, and when weighed in context of balancing energy affordability. In fact, ACE-NY's own consultants stated that "[t]he specific impacts of the recent unprecedented inflation … will ultimately be unique to each project. Each project will reflect a variety of development and procurement approaches and

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10 *See* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts.

11 *Id.*

12 ACE-NY Petition at 25-26.

strategies and will have expected different timing for the commencement of construction."[13] The City submits that, in this matter, the Commission should not find that administrative efficiency outweighs the other interests cited above and justifies ACE-NY's proposed approach of providing the same level of relief to Tier 1 developers of each resource type.

Instead, the Commission should require each contract holder to provide financial and other information regarding the economic viability of its project and the amount needed to preserve or restore its economic viability. The failure of refusal of a developer to provide such information and otherwise cooperate with DPS Staff's and/or NYSERDA's inquiries and assessment should be sufficient grounds to deny providing any relief.

Once the developers provide this information, DPS Staff, NYSERDA, or a consultant working for either or both entities should conduct an assessment of the information submitted and determine the specific amount needed by each project, and the amount by which the strike price set forth in the Tier 1 contract should be increased. To expedite this process, the Commission should delegate to DPS Staff the ability to approve the revisions within these parameters. Just as the underlying Tier 1 contracts are available to the public, the revised strike prices should be equally publicly available.

As part of considering the needs of each Tier 1 project on its own merits, the Commission should provide guidance to DPS Staff and NYSERDA to consider other salient factors in determining the appropriate amount of relief (they also should determine whether any relief is appropriate, a separate issue discussed in Part E, below). These factors include, but are not limited to, the stage of development of the project, whether contracts have been executed for materials,

[13] *Id.* at Attachment A, ¶ 53.

equipment, and/or the construction of the project, and the likelihood that the project will be completed.

As to the first factor, the City understands that despite the passage of several years, some projects have made little progress while others have completed the siting and/or interconnection processes, and a few have commenced construction. Projects that are closer to completion and need financial support to reach commercial operation arguably are more deserving of support than projects which have not yet commenced the siting process (or undertaken the studies needed to support a siting application). There is a continuum of progress, and the Commission should not reward developers which have sat on their NYSERDA contracts and done little to nothing to advance their projects.[14] The consequence of terminating contracts for projects that have made no progress would be minimal as it is unlikely that the projects would have contributed to achievement of the CLCPA goals; however, denying the request for relief entirely and causing the projects that are in the siting and/or interconnection processes to fail would be very problematic for achievement of the CLCPA goals and this outcome should be avoided.

As to the second factor, developers who have entered into contracts with suppliers and contractors should have mitigated or limited the amounts of additional funding needed through those presumably binding agreements. At the same time, those developers presumably have a much more accurate calculation of the additional amounts needed to complete their projects. Moreover, there is a higher likelihood that projects for which such contracts are in place will be

[14] It is possible that the State and customers would benefit from the termination of contracts for projects that have not been pursued at all. The terminations could free up land and interconnection rights and allow other developers to move forward with similar projects in the same areas and interconnected to the same substations or transmission lines. Once those contracts are terminated, NYSERDA could then conduct a new solicitation under a well-defined process and award contracts to bidders who commit to diligently proceeding with development of the projects.

completed, and arguably are more deserving of support. The greater level of detailed and actual cost information for such projects also should influence the amount of relief provided.

As to the third factor, the City is not proposing that a detailed engineering and financial analysis be performed for every project. Rather, there should be a review of important project milestones, including the status of land acquisition activities, extent of local opposition, whether siting permits have been sought, progress through and issues raised within the siting process (*e.g.*, existence of extensive wetlands or rare, threatened, and endangered species within the development sites), whether and what construction-related contracts have been let and executed, the projected or known interconnection costs and status of the project within the interconnection process (*e.g.*, the cost of system upgrade facilities, system deliverability upgrades, and connecting transmission owner attachment facilities could render a project uneconomic, and customers should not be required to provide substantial incremental funding for uneconomic projects that otherwise would not be pursued), and the progress of any construction activities.

Because a detailed audit is not needed or warranted, an expedited review of this information should be possible. To ensure that DPS Staff and NYSERDA can reasonably rely on the information as submitted and avoid the need to conduct due diligence or verification of the information, the Commission should require that the chief executive officer or other senior official from each developer attest under oath to the accuracy of the information submitted.[15]

C. The Commission Should Impose Conditions On Receipt Of Additional Funding

It is notable that although ACE-NY seeks additional funding for Tier 1 developers, it offers nothing in exchange for that additional funding on their behalf. No incremental benefits are

[15] This approach is routinely used by the NYISO. *See, e.g.*, NYISO Market Administration and Control Area Services Tariff Sections 23.4.5.7.9.2, 23.4.5.7.9.6.5, and 23.4.5.7.9.6.6.

proposed, nor are there any commitments to diligently and expeditiously pursue completion of the projects. For the reasons discussed above, there should be additional consideration provided by the developers for the increasing funding they will receive.

First, each developer should be required to provide a schedule showing the major steps for completion of each project. The City recognizes that certain matters, such as receipt of siting and other regulatory approvals are not within the developers' control. But, the developers can provide their plans for seeking siting and regulatory approvals, securing financing, ordering materials and equipment, retaining contractors, pursuing an interconnection agreement, and commencing construction. While those schedules will not be binding, they can assist the review described above by showing that the developer has a clear plan and path for timely completing the project. Over time, the schedules can be used to monitor the developers' progress and ensure that they are diligently moving forward.

Second, the Commission could require each developer to file a financial report once each project is complete, showing the actual costs incurred as compared to the cost projections upon which the additional funding for the project was based. To the extent the actual costs are lower than the cost projections, the strike price could be further adjusted to prevent developers from earning windfall profits.[16] If the actual costs exceed the cost projections, those differences should be borne by the developers.

The City recognizes that these projects are not rate-regulated with fixed rates of return. Rather, the projects are being pursued by competitive entities who seek to participate in the NYISO's competitive wholesale electricity markets (in addition to selling RECs to NYSERDA

[16] This recommendation should not cause problems for financing projects as any clawback would apply only to recoveries in excess of costs incurred. There should not be any risk of a strike price being adjusted in a manner that restricts recovery of the project's actual costs.

and others). As part of its move to competition, the Commission sought to shield customers from certain costs and risks, including the risks associated with generation.[17] Here, the risks associated with the development and success of any renewable resource should remain primarily with the developers. If there are cost overruns other than due to extraordinary events like the COVID pandemic, they should be the responsibility of the developers.[18]

In the event developers oppose any conditions being attached to the provision of relief, such objections should be rejected. Developers should not be permitted to obtain changes to their binding contracts that were not contemplated in the contracts and simultaneously prevent other changes designed to create balance, protect customers, and provide reasonable consideration for the relief granted. Further, if a developer is unwilling to accept any conditions imposed by the Commission, it can choose to reject the adjustment to its strike price.

D. No Relief Should Be Provided To Developers Which Cannot Demonstrate Good Faith Progress

According to a report recently issued by the Office of the State Comptroller, the majority of the projects that received NYSERDA contracts in 2017 and 2018 are still in development.[19] The passage of five to six years should have been sufficient for most of these projects to be in the latter stages of development and have minimal to no need for additional financial support. That is, if a project is already in construction, it would have already completed financing, purchased its

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[17] Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12 (issued May 20, 1996).

[18] Similarly, if developers are able to complete their projects under budget, they have the opportunity to increase their earnings. The adjustments described herein apply only to the additional costs arising from the COVID pandemic and inflation. The risks of development and their target returns and margins should have been factored into their original bids; the City is not seeking to capture any of those potential benefits.

[19] Office of the State Comptroller, "Renewable Electricity in New York State – Review and Prospects," dated August 2023, at Figure 5.

equipment and materials, and executed binding contracts with its construction contractors. Such actions would have minimized, if not eliminated, the impacts of inflation and supply chain problems. The Commission should require developers that have entered into contracts and closed on their financing to point to specific cost increases caused by COVID impacts before providing relief.

If the developers of those projects have not made substantial progress by now, that raises a question as to why not. Put another way, if a developer failed to take reasonable actions to pursue regulatory approvals for and completion of its project for five to six years, the Commission should not reward that developer by now providing it more financial support. Instead, the Commission should direct NYSERDA to exercise its rights and remedies under the contract and conduct a new solicitation to select a different developer that hopefully will be more diligent in its actions. The City sees no valid reason to reward bad behavior.

E. The Commission Should Set A Cap On The Amount Of Incremental Funding Provided To Any Project

As these comments and other City actions amply demonstrate, the City wants to see renewable resources developed expeditiously and the State become far less reliant on fossil-fueled electric generating facilities. As discussed above, extraordinary circumstances have arisen over the past two years that warrant providing relief to developers of renewable resources. Also as discussed above, the provision of this relief should be balanced with energy affordability considerations.

ACE-NY suggests that the customer bill impact from its requested relief is relatively modest. However, ACE-NY's request should be considered in context of the concurrent requests for relief sought by the offshore wind developers and Clean Path New York LLC ("CPNY").

To reduce the impacts on customers, and particularly on low income and other energy burdened customers, the Commission should consider imposing a cap on the relief provided to any individual project. ACE-NY's consultant calculated that the proposed Tier 1 relief would range from 43% to 73% compared to the initial vintage average strike prices.[20] That level of relief appears to encompass adjustments for all stages of the development process. But, as discussed above, all projects should have made some progress at this time.

As discussed below, the relief requested by Sunrise Wind LLC ("Sunrise Wind") is approximately 25% of its original strike price, and that request is based on details that are specific to its project, as opposed to ACE-NY's generalized analysis. The Commission should be guided by that lower level of relief and its associated empirical evidence in setting a cap.[21]

The City recognizes that imposing a cap could mean that some projects are unable to proceed. Indeed, the Commission, NYSERDA and ACE-NY all recognize that that not every project will proceed. The current attrition rate is 12%, and the Commission has accepted an attrition rate of 20%.[22] If a project is not economically feasible even with a reasonable level of incremental funding, it should not proceed and should be considered part of expected attrition. It would not be reasonable or fair for customers to be required to provide unlimited funding in order to allow infeasible and uneconomic projects to proceed.

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[20] ACE-NY Petition, Attachment A at Table 17.

[21] Empire Offshore Wind LLC and Beacon Wind LLC (collectively, "Empire Wind") also provided empirical evidence in support of their request for relief, but the redacted petition does not provide any information on the amount by which their strike prices would be adjusted under their proposal. To the extent the information in the Empire Wind Petition that was redacted but available to the Commission contains information that can inform the appropriate level of a per-project cap, it too should be relied upon.

[22] ACE-NY Petition at 10, 20, and Attachment A, ¶ 57.

POINT IV

THE COMMISSION SHOULD SCRUTINIZE THE EMPIRE WIND AND SUNRISE WIND REQUESTS AND LIMIT THE RELIEF GRANTED BASED ON THAT REVIEW

The City sees material differences between the Empire Wind and Sunrise Wind Petitions and the ACE-NY Petition. Empire Wind and Sunrise Wind appear to have provided specific information regarding the changes in costs that they have experienced since they entered into contracts with NYSERDA. As a result of recent efforts by the City and Multiple Intervenors,[23] the public now knows that Sunrise Wind has experienced increases to the cost of the foundations, turbines, cables, and substation equipment, as well as the cost of constructing the project.[24] Empire Wind has experienced increases to the cost of its wind turbine generators, substation equipment, and cables, as well as its cost of capital.[25] Both Empire Wind and Sunrise Wind have experienced interconnection costs that exceed their preliminary estimates; while neither entity appears to have demonstrated that those higher costs are due to the COVID pandemic, supply chain constraints, or inflation, it is reasonably possible that at least some portion of the higher costs are due to these factors.

A. The Commission Should Carefully Review The Confidential Information Provided By Empire Wind and Sunrise Wind And Limit Incremental Recoveries To Properly Justified Incremental Costs

While Empire Wind and Sunrise Wind publicly disclosed some information regarding the higher costs they have experienced as a result of the City's Motion, many of the financial details

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[23] Case 15-E-0302, *supra*, Motion to Compel Disclosure of Multiple Intervenors and the City of New York (filed July 27, 2023).

[24] Sunrise Wind Petition at 31.

[25] Empire Wind Petition at 17-19, 21-22.

were redacted as being commercially sensitive.[26] For this reason, the City cannot comment on most of the support provided in either Petition. Rather, the City respectfully urges the Commission and DPS Staff – who have full access to these details – to carefully scrutinize all of the details provided and confirm that Empire Wind and Sunrise Wind have made reasonable attempts to minimize the size of the adjustments needed to their strike prices to make their projects economically viable. If either Empire Wind or Sunrise Wind has not made any such attempts, or if the Commission or DPS Staff identify concerns with the details provided, the Commission should either remand this matter for additional process (possibly including an evidentiary hearing so that the justification for the request can be fully tested) or it should modify the requested adjustment mechanisms and limit them to encompass only those elements for which the Commission finds sufficient justification.

For example, Empire Wind acknowledges that it already has entered into procurement contracts for foundations, substation equipment, and cables.[27] Nevertheless, it seeks pricing adjustments through June 7, the date it filed its Petition.[28] The City questions the need for awarding inflationary adjustments for a period of time beyond the dates in which Empire Wind presumably locked in commodity, construction, and other pricing. It does not appear that Empire Wind offered any justification for the June 7 date rather than the date of execution of its contracts. Because Empire Wind redacted its financial details, the City cannot determine the incremental amount Empire Wind is seeking. However, the Commission should be able to do so, and it should

[26] In its Motion, the City did not challenge the redaction of information that appeared to be commercially sensitive.

[27] Empire Wind Petition at 35.

[28] *Id.* at Exhibit A, p. 2.

correspondingly limit the relief provided unless those confidential details demonstrate why such relief is appropriate.

B. The Commission Should Provide For Equitable Treatment Between Customers And The Developers

In granting relief to Empire Wind and Sunrise Wind, the Commission should ensure symmetrical treatment between customers and the developers and their investors. As discussed in Part A, above, both Empire Wind and Sunrise Wind identified the factors that have caused its construction and financing costs to increase. Both developers also identified actions they have taken to mitigate the cost increases.[29] However, it is not clear whether either developer has fully exhausted opportunities to achieve cost reductions or other savings, or whether additional opportunities exist now or may become available in the future. Considering that similar impacts are affecting renewable resource and other infrastructure projects across the country, the possibility exists that Congress may decide to step in again and provide additional relief.

Both developers request that the Commission base the adjustment mechanisms for their projects on the mechanisms contemplated by NYSERDA in its Phase 3 offshore wind solicitation.[30] The City disagrees that the Commission should apply the exact same mechanisms because the setting here is different than NYSERDA's Phase 3 solicitation.

There, developers are competing against each other and are motivated to submit their best and presumably lowest cost proposal(s) in order to be selected. NYSERDA will be able to compare and contrast the proposals submitted, and presumably NYSERDA will be able to use the details

[29] Empire Wind Petition at Analysis Section I.D; Sunrise Wind Petition at Section III.G.

[30] Empire Wind Petition at Exhibit A; Sunrise Wind Petition at Section IV. Empire Wind proposes certain changes to the NYSERDA framework, but it failed to provide any evidence to support elimination of the fixed component of the mechanism (the justification provided consists of a single conclusory sentence).

submitted to adjudge the reasonableness of the costs and strike prices in each proposal. Here, NYSERDA will not have a similar opportunity because neither Empire Wind nor Sunrise Wind are engaged in any competition, and neither developer has any similar motivation to minimize its costs.

For the same reasons discussed above in Points I and II, the City respectfully recommends that some relief be provided to Empire Wind and Sunrise Wind. However, as for the Tier 1 contracts, there should be material consideration for the State and customers tied to the provision of relief (greater than that included in the Phase 3 solicitation or than presently suggested by Empire Wind and Sunrise Wind).

Both developers argue that the State and customers would benefit by the contract modifications because harmful emissions would be reduced, progress toward the CLCPA goals would be advanced, wholesale electricity prices may be adjusted downward,[31] and the State would realize economic benefits.[32] However, both developers ignore that all of these benefits would have accrued to New York and customers under the existing contracts. Put another way, there is no incremental or supplemental consideration for the additional payments Empire Wind and Sunrise Wind are seeking. Notably, neither Empire Wind nor Sunrise Wind offers any commitment that their projects will be completed (or completed in a timely manner) if the requested relief is granted.

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[31] Empire Wind included in Exhibit B of its Petition a cursory and limited analysis prepared by ICF Resources, LLC ("ICF") of the impacts of a three-year delay in the commencement of the offshore wind projects. ICF asserted that capacity prices could be higher. However, it is not clear whether ICF took into account in its analysis that the NYISO is changing its capacity markets via the introduction of capacity accreditation. That construct will reduce the capacity value of renewable resources, including offshore wind, as compared to the capacity value of fossil plants. As a result, capacity prices could be lower, not higher, as a result of the delay. Because of its lack of clarity and explanation, that analysis is suspect.

[32] Empire Wind Petition at 35-42; Sunrise Wind Petition at 39-43.

The Commission should impose similar requirements on Empire Wind and Sunrise Wind that the City recommends above for the Tier 1 contracts. The Commission should also adopt one or more mechanisms that differ from those set forth in the Phase 3 solicitation in the following ways.

While the mechanisms should allow only for a one-time upward adjustment to the strike prices due to inflation, labor, materials, and other factors, any upward adjustment mechanism should be paired with a clawback or downward adjustment provision that provides for sharing of savings should project economics change over the course of the term of the contracts. Such an approach would achieve the balancing between developer and customer interests discussed above while ensuring that the developers receive a reasonable return of and on their investments. The City recommends a sharing ratio of 80/20 (customer/developer).[33]

Also, the Commission should require both developers to file final financial reports once their projects are complete and in-service. To the extent that the actual costs for any project are less than the amounts estimated under the adjustment mechanisms, the strike price for that project should be adjusted downward to capture the difference between the projected and actual costs.

Sunrise Wind asserts that it is seeking only to attain financial viability, not windfall profits.[34] Although the greater relief sought by Empire Wind suggests that it is seeking higher profits, the Commission should limit the relief granted to both developers such that there are no increases in their profits. Rather, the mechanisms should solely be recovering incremental costs. If Empire Wind or Sunrise Wind does not actually experience the full amount of the projected

[33] The is the same ratio, but in reverse, to that proposed by Empire Wind for its interconnection cost sharing mechanism.

[34] Sunrise Wind Petition at 42.

incremental costs, then it cannot be harmed by a corresponding reduction to the strike price to match the actual costs incurred.

C. The Commission Should Limit The Amount Of Relief Approved

As to the total magnitude of relief that should be provided, the publicly available information in the Sunrise Wind Petition indicates that the total adjustment could be $27.50/MWh or more, an increase of at least 25%. Empire Wind declined to provide any information on potential value, or cost, of its total adjustment. However, Empire Wind appears to be seeking larger adjustments than Sunrise Wind, and two of its projects are larger than the Sunrise Wind project. Assuming that the increases Empire Wind is seeking are at least as large as the Sunrise Wind increase, the total amounts at issue are substantial.

The City does not have access to the financial details presented in the Empire Wind and Sunrise Wind Petitions, and it cannot others determine whether the developers took reasonable actions to minimize the effects of the pandemic, inflation, and supply chain problems. If the Commission's review of the confidential details reveals that either developer failed to act reasonably or responsibly, customers should not be responsible for their failure to do so. Similarly, to the extent Empire Wind and Sunrise Wind seek to improve their contracts via the pending Petitions, the Commission should not allow the contracts to be so modified now.

Rather than apply all of the same adjustment mechanisms from the NYSERDA offshore wind Phase 3 solicitation, as the developers request, the Commission should parse them and determine which risks the developers should continue to bear. For example, the City acknowledges that fuel prices increased significantly in 2022, but they have since fallen substantially.[35] Only the

[35] According to monthly reports produced by the NYISO, distillate prices in April 2023 were 52.4% lower than in April 2022, and 29.4% lower in August 2023 than August 2022. *See*

extraordinary changes resulting from the COVID pandemic, supply chain constraints, and unexpected increases in inflation – to the extent such changes could not be mitigated – should be captured by the adjustment mechanisms. The Commission should separate out costs that typically fluctuate from costs impacted by the pandemic and continue to make the developers responsible for typical fluctuations (as they were under the contracts they executed).[36]

Similarly, the City questions the reasonableness of both developers' preliminary interconnection cost estimates. Sunrise Wind offered no explanation or justification as to why its estimate was so far off from the NYISO's determination, so there is no basis to determine whether its estimate was reasonable. Customers should not be solely responsible if a developer or its consultant did a poor job in estimating those costs. Given the lack of justification for this item, the Commission should consider denying the request in its entirety. Alternatively, the Commission should consider some sharing between customers and developers of the difference, similar to the Empire Wind proposal. However, since customers had no control over or involvement with the development of those cost estimates or the means to mitigate any cost impacts, their share should be limited.

While an 80/20 sharing, as proposed by Empire Wind,[37] may be appropriate in some settings, such as in a solicitation where developers are hotly competing against each other, it is not appropriate here where there is no competition and the developers are subject to binding

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Market Performance Highlights within the NYISO CEO/COO Reports provided to the Management Committee, available at https://www.nyiso.com/management-committee-mc-.

[36] It is not clear from the ACE-NY Petition whether similar "typical" costs were included in its proposed adjustment mechanism. To the extent that mechanism includes such costs, the Commission should make the same modification to that mechanism.

[37] Empire Wind Petition at Exhibit A, p. 3.

contractual commitments. In this matter, and for the foregoing reasons, the City recommends that the customers' share be no more than 50% of the difference.

POINT V

THE COMMISSION SHOULD DENY THE EMPIRE WIND REQUESTS FOR RELIEF OTHER THAN ADJUSTMENTS TO ITS STRIKE PRICES

The Empire Wind Petition is unique among the four Petitions in that it sought relief that goes well beyond adjustments to the strike prices for the Empire Wind and Beacon Wind projects. The Commission should not entertain a broad renegotiation of the offshore wind contracts and should summarily deny all of the additional requests for relief. The fact that no other developer is seeking similar additional forms of relief suggests that such requests are not necessary to make the projects economically viable.

Indeed, the Commission should not allow the extraordinary circumstances surrounding the COVID pandemic to form a basis for Empire Wind to generally negotiate a better deal for itself with no incremental benefits for customers or the State. As discussed above in Point II, the Commission must balance customer and investor interests, and it should not place investor desires above the interests of customers.

A. There Is No Justification For A Future Inflation Adjustment

As to the inflation adjustment for operations and maintenance ("O&M") costs during the term of the contract, Empire Wind offered no evidence that (i) current conditions will persist for the next 25 years, (ii) there is any nexus between current conditions and its future O&M expenses, or (iii) there are any new circumstances which warrant this contract modification. Empire Wind could have proposed an inflation factor for its O&M costs in its proposals to NYSERDA. A brief

review of its proposals indicates that it never sought such a factor.[38] Empire Wind also could have requested that NYSERDA include an inflation factor when it negotiated its contracts for its three projects. However, none of the contracts appear to contain any such adjustment.

The fact that similar factors exist in offshore wind contracts in other markets[39] demonstrates that Empire Wind was or should have been aware of this issue when it advanced its proposals and negotiated its contracts. Its failure to timely raise that issue (either in 2018-2019 or 2020-2021) should preclude it from seeking to so modify its contracts now.

Empire Wind asserted that analysis in Section I.A of its Petition supports this request for relief. It does not. Only a single chart, related to financing rates, contains information for the period after 2023, and financing rates are not relevant to O&M expenses. The substantive discussion in that section of the Petition is limited to impacts on construction costs.

Empire Wind offered only two paragraphs and a fully redacted figure in support of this request. Although the City cannot comment on the redacted figure, it submits that the justification is lacking. The developer claimed that it has seen vessel rates and insurance premiums increase.[40] However, such increases over time are neither surprising nor unexpected. Empire Wind offered no evidence that the rates of increase over the past three years are unusual or different from increases that occurred prior thereto.

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[38] Empire Wind's proposals are posted on NYSERDA's website – for Empire Wind: https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2018-Solicitation; for Beacon Wind: https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2020-Solicitation.

[39] Empire Wind Petition at 43.

[40] *Id.* at 20.

B, The Relief Sought Related To Its Interconnection Costs Is Unjust

Empire Wind asserted that its projects face risks of delays and cost increases due to the condition of the transmission system in New York City and Long Island.[41] This claim also lacks merit. The condition of the downstate transmission system has generally been the same for more than a decade. Thus, at the time Empire Wind developed and submitted its proposals for the 2018 and 2020 solicitations, it had the ability to know or learn about the condition the transmission system. It also had the ability to retain experts, as other developers have routinely done, to assess the potential system impacts of its projects and develop estimates of the potential interconnection costs. Accordingly, it should have taken into account in its proposals the condition of the transmission system and the potential interconnection costs.

To the extent Empire Wind and its consultants underestimated the potential interconnection costs, that is a matter for the developer to resolve internally or with its consultants. Customers should be not liable or responsible for such errors or poor estimates. Had the situation been reversed, and the actual interconnection costs were significantly lower than Empire Wind's estimates and the amounts reflected in its strike prices, NYSERDA would not have had any basis to seek a downward adjustment to the strike prices or otherwise recapture the difference for customers.

Additionally, at least one of the developer's projects participated in a prior NYISO Class Year process, but the cost allocation was declined. The Commission should not grant credence to Empire Wind's arguments when the developer voluntarily chose to reject its initial cost allocation, and it should not require customers to provide additional funding for costs that should have been included in the bid proposals to NYSERDA.

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[41] *Id.* at 25-29.

The use of cost-sharing mechanisms such as the one Empire Wind proposed for the treatment of interconnection costs is typical for rate-regulated projects but unusual for projects of this type. Such a mechanism may be appropriate here because of special circumstances – the need discussed in Point I above for the offshore wind projects to be completed in order to achieve the CLCPA's 70 x 30 goal and the other benefits discussed there. If the Commission is amenable to a cost-sharing mechanism for Empire Wind's interconnection costs, the City recommends that the mechanism be symmetrical. That is, there should be a sharing of the upside benefits. To be clear, the City is not seeking to disrupt the earnings expectations that were included in the developer's accepted proposals for the Empire Wind and Beacon Wind projects. However, if the developer's profits exceed its expectations, then there should be some sharing of the excess similar to earnings sharing mechanisms routinely adopted by the Commission in rate cases.[42]

C. The Commission Should Not Entertain Any Extension Of The Contract Term

Empire Wind sought longer terms for its NYSERDA contracts in order to improve the value proposition for its investors.[43] The developer did not attempt to justify this unwarranted request, and it failed to point to any benefit to customers or the State for longer contract terms. Moreover, it offered no connection between the current extraordinary financial circumstances and the request for an additional five years of guaranteed payments from NYSERDA and customers.

Had the developer wanted 30-year contracts, it could have and should have pursued them during the 2018 and 2020 solicitations and contract negotiations. The Commission should not

[42] The City defers to the Commission and DPS Staff to develop a reasonable and appropriate sharing mechanism based on their review of the financial inputs and assumptions for each project. The City does not have access to that information and therefore cannot propose details for such a mechanism for the Commission's consideration.

[43] Empire Wind Petition at 44.

allow Empire Wind to re-open its contracts for the purpose of obtaining more generous and beneficial provisions.

D. The Alternative Mechanisms Sought By Empire Wind Should Be Summarily Rejected

Empire Wind proposed a series of additional forms of relief that it characterized as not part of its "primary" requests.[44] It offered no justification for any of these alternative mechanisms. The developer has the burden of proof to justify its requests, and its failure to provide any explanation or rationale for these alternative mechanisms provides a sufficient basis for the Commission to summarily reject them.

POINT VI

CLEAN PATH NEW YORK SHOULD BE PROVIDED THE SAME RELIEF GRANTED TO TIER 1 PROJECTS

The City understands that CPNY is seeking an adjustment to its strike price that is commensurate with the relief granted to Tier 1 projects pursuant to the ACE-NY Petition. The City was glad to see that CPNY is not seeking any adjustment to its strike price related to the cost of its transmission line from Delaware County to New York City.[45]

As the Commission is aware, the City has long advocated for new transmission lines from upstate to New York City to facilitate the transformation of the electricity supply portfolio in New York City. Consistent with this advocacy, the City was a strong proponent of Tier 4 of the Clean Energy Standard, and it took the extraordinary step of entering into a long-term contract with NYSERDA to purchase 20% of the total RECs produced by the two Tier 4 projects.[46]

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[44] *Id.* at 44-45.

[45] CPNY Petition at 10.

[46] *See* Case 15-E-0302, *supra*, Notice of the City of New York Regarding Renewable Resource Procurements (filed November 30, 2021).

CPNY's contention that its strike price should be adjusted in a corresponding manner to any adjustment made to the contracts for the Tier 1 projects so that Tier 1 developers are not dissuading from participating in Tier 4 seems reasonable. The City respectfully urges the Commission to avoid an outcome in this matter that undermines Tier 4 or otherwise disincentivizes developers from committing their upstate wind and solar projects to be part of CPNY's Selected Project.

However, the City recommends a similar modification for CPNY that it proposed above in Point II for the Tier 1 projects. Either DPS Staff or NYSERDA or both should determine the adjustment needed for each resource that is included in CPNY's Selected Project. The adjustments should be determined individually, subject to the cap discussed in Point III. Then the adjustment to the strike price for CPNY should be calculated based on a weighted contribution from each project.

CONCLUSION

The City supports the State's policy goal of transitioning away from fossil-fueled electricity generation and to a fleet of carbon-free supply resources. As discussed herein, achievement of the CLCPA's 70 x 30 goal is critically important for many reasons. At the same time, the City recognizes the need to preserve energy affordability and balance the competing interests in these matters.

The COVID pandemic and its aftermath, including supply chain disruptions and high inflation rates, are extraordinary circumstances and justify the provision of financial relief to renewable resource developers so that they may continue to develop their projects and help achieve the 70 x 30 goal. But, the provision of relief should be bounded and include conditions, as discussed herein, to balance the interests of the developers and customers. Importantly, the relief

should be provided on a case-by-case basis based on demonstrated need so that no developer is over-compensated and customer impacts are limited. Further, the Commission should reject Empire Wind's requests for relief other than adjustments to its strike prices.

Respectfully submitted,

CITY OF NEW YORK

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